

NST in lwy

Christopher Dighton,
Against
Bernard Greenville, Esq;

The CASE of the Rt. Honourable the Earls of Huntingdon and Scarfsdale.

Upon a Writ of Error, to Reverse a Judgment given by the Court of Kings-Bench against
Christopher Dighton, in an Ejectment brought by the said Earls in his Name.

Trial in Easter Term, 1683.

Knight's Stat. 9 Apr.
20 Jac. 1. An Dom. 1622.
Gerrard's, 20 Nov.

13 Car. 1. An Dom. 1637.
Elwes's and Burrows's,
27 May, 15 Car. 1. Anno
Dom. 1639.

5 July, 1655. Assignment
of Knight's and Gerrard's
Interests.

26 May, 1657. Sale to
Sir John Lewis.

Trin. Term, 1657. Fine
to him.

Edw. Lewis's Fine, Mich.
Term, 23 Car. 2. An. D. 1671.

Last Proclamation, 11 June,
24 Car. 2. An. Dom. 1672.

30 July, 1680. Admini-
stration to Burrows.

31 July, 32 Car. 2. Anno
Dom. 1680. Satisfaction ac-
knowledge on Gerrard's Stat.

Defendant's Entry, 28 Sept.
34 Car. 2. An. Dom. 1682.

Judgment for Mr. Green-
ville in Easter Term, 1688.

That Judgment Reversed in
Trinity Term, 1690.

Judgment affirmed, Mich.
Term, 1694.

THE said Earls being Seised and in Possession of the Mannor of Marr, and divers Lands and Tenements in Marr, in the County of York, in Right of their Wives, the Daughters and Coheirs of Sir John Lewis, late of Ledstone in the County of York, Baronet, deceased, who had Purchased the same of one Thomas Lewis; Mr. Greenville, under Colour of an Extent on an old Statute, evicted the Earls. Whereupon the said Earls brought their Ejectment, which came to be Tried at the King's-Bench Bar, and the Jury found the Matter Specially to this effect:

That Thomas Lewis being seized in Fee of the Premises, acknowledged a Statute of 1200 l. to William Knight; afterwards another of 1000 l. to Richard Gerrard; and afterwards another of 5000 l. to Sir Fervase Elwes, and Richard Burrows.

That Execution was sued out upon all these Statutes, and the Premises in Question extended.

That the Estates and Interests of Knight and Gerrard, by Virtue of the said Extents, were assigned to one Edward Lewis.

That afterwards Thomas Lewis being in actual Possession for 4000 l. sold the Premises to John Lewis Esq; and levied a Fine, with Proclamations thereof, to him.

That John Lewis by Will devised the Premises to his Brother Edward Lewis, and the Heirs Males of his Body; and for want of such Issue, to his the said John Lewis's Daughters, (who afterwards married the Earls of Huntingdon and Scarfsdale.)

That John Lewis died, and the Premises then, and at the time of the making the said Will, were in the Possession of Edward Lewis.

That Edward Lewis being in actual Possession, levied a Fine with Proclamations, which was to the use of Himself and his Heirs, and died without Issue, whereby the Premises descended to the said Daughters of John Lewis, (who were Heirs as well to the said Edward as John Lewis,) who entred and were seised, and marrying the said Earls, they entred and were seised in Right of their Wives.

That Administration to Burrows, the surviving Connusee of the 5000 l. Statute, was committed to Anne, Wife of the Defendant Mr. Greenville, as to that Statute and the Extent thereon.

That Mr. Greenville, and his Wife who was Administratrix of Gerrard, acknowledged Satisfaction on the Statute acknowledged by Lewis to Gerrard, which was thereupon vacated.

That Mr. Greenville, in Right of his Wife as Administratrix of Burrows, entred upon the said Earls into the Premises, and was Possessed.

This Special Verdict was several times Argued by Council on both Sides, and in the Fourth Year of the late King James, Judgment was given by the then Chief Justice Wright for Mr. Greenville.

Whereupon the Earls brought a Writ of Error in the Exchequer-Chamber, where the Matter was many times Argued, and at last Judgment was pronounced there for Reversing the Judgment in the King's-Bench, and for giving a Judgment for Dighton; Six of the Judges in the Exchequer-Chamber, to wit, The Chief Justice Pollexfen, the Chief Baron Atkins, Mr. Justice Ventris, Mr. Justice Rokeby, Mr. Baron Lechmere, and Mr. Baron Turton, delivering their Opinions for Dighton; the Earls Lessee, and only Two, to wit, Mr. Justice Powell deceased, and Mr. Justice Nevill, against him.

Thereupon the Earls came back into the King's-Bench, to have the Benefit of the Judgment so pronounced in the Exchequer-Chamber, and Execution; but the Judges refused to award Execution, because there was a Mistake in the Writ of Error, the Writ saying, [Because in the Record and Process, and also in giving Judgment of a Plaint which was before the late King Charles;] Whereas it should have said, [Because in the Record and Process of a Plaint which was before the late King Charles, and in giving Judgment on the same Plaint before the late King James;] The Action being brought in King Charles's time, and the Judgment given in King James's.

Upon which, the Earls were forced to bring a new Writ of Error, whereon the Judgment was after affirmed for Mr. Greenville in the Exchequer-Chamber; there being Three Judges for Reversing, to wit, Mr. Justice Rokeby, Mr. Baron Lechmere, and Mr. Baron Turton; and Three for Affirming, to wit, The Chief Justice Treby, Mr. Justice Nevill, and Mr. Justice Powell: So that a Majority being required to Reverse the Judgment, it was of course to stand; Sir Robert Atkins, whose Opinion was with the Earls, having a few days before surrendered his Place.

The Question that did arise upon this Special Verdict was, Whether the Estate and Interest, by the Extent on the 5000 l. Statute, was barr'd by the Fine levied by Edward Lewis, and Five Years Non Claim?

For the Interests of the Extents on Knight's and Gerrard's Statutes being vested in Edward Lewis, and the Inheritance afterwards coming to him, the Estates, by virtue of those Extents, were drowned in the Inheritance, and extinguished by the Fine which he levied, and the Extent on the 5000 l. Statute now claimed by Mr. Greenville coming to take place, when the Extent on the Two former Statutes, which were Prior to this, were removed, and no Claim nor Entry being made by virtue of the last Extent within Five Years after the Fine levied by Edward Lewis, the Interest by that Extent was thereby absolutely barred.

And to remedy that, Mrs. Greenville procures Letters of Administration to herself of Gerrard's Personal Estate, and then acknowledges Satisfaction on his Statute; the Interest whereof was long before drowned and extinguished, and thereby pretends to get a new Right to enter into the Premises, by virtue of the Extent upon the 5000 l. Statute. And, Whether Mrs. Greenville should have Five Years more to make her Claim, after her own acknowledging Satisfaction on Gerrard's Statute, which had been discharged before by the Extent being drowned in the Inheritance, was the main Question in this Cause.

Now for that it is humbly conceived Mrs. Greenville could not, by the acknowledging Satisfaction on Gerrard's Statute in manner aforesaid, gain any new Right to enter, to avoid the Fine levied by Edward Lewis above Nine Years before; by which, and Five Years Non-Claim, the Interest by the Extent now claimed by her is barred, in regard an Entry might, and then should, have been made into the extended Estate, but none was made. And the contrary Opinion tends very much to weaken the Security of a Fine and Non-Claim, which is the highest and best Security in Law for the quieting People in their Estates, and for the preventing Suits. And it will therefore be of very pernicious Consequence to all Purchasers and Owners of Estates, if such old dormant Incumbrances as Mrs. Greenville's Extent on the old Statute, be at any time set up against a Fine and Non-Claim, and supported by such a Method, as the vacating a Statute, the Interest of which was long before extinguished, for thereby Estates may be incumber'd, which have been long Enjoyed without Interruption.

It is Humbly Submitted to the Consideration of the LORDS in Parliament, and hoped,
That the said Judgment given for Mr. Greenville, and affirmed as aforesaid, shall be Re-
versed, and that Judgment shall be given for Mr Dighton, that the said Earls may be
Reinstated in the Possession of the said Estate, which they have now been kept out of many
Years under Pretence of Mr. Greenville's said Statute.

B. Shower.
Ed. Northey.